IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 1174 of 2007.

Reserved on: 21.8.2007.

Date of decision: 27.8.2007.

Rajesh Kumar & Ors. … Petitioners

Versus

State of H.P. & Ors. … Respondents

Coram :

The Hon'ble Mr. Justice Deepak Gupta, Judge.

The Hon'ble Mr. Justice V.K. Ahuja, Judge.

Whether approved for reporting?[1] Yes.

For the Petitioners: Mr. G.C. Gupta, Senior Advocate with Mr. Mohinder Gautam, Advocate.

For the respondents: Mr. M.S. Chandel, Advocate General, with Mr. R.M. Bisht, Deputy Advocate General, for respondents No. 1 and 3.

Mr. Lovneesh Kanwar, Advocate, for respondent No. 2.

Mr. Ramakant Sharma, Advocate, for respondent No. 4.

Per V.K. Ahuja, J.:

This judgment shall dispose of the writ petition filed by the petitioners under Articles 226/227 of the Constitution of India for issuing of appropriate directions to respondents No. 1 to 3.

Briefly stated the facts of the case as alleged by the petitioners are that respondent No. 4 is an educational institution recognized by National Council and respondent No. 4 had set up a JBT

[1]Whether reporters of Local Papers may be allowed to see the judgment? Yes.

(Elementary Teachers) Education Training Centre. Respondent No. 4 being aggrieved by the acts of respondents No. 1 & 2 regarding non-grant of provisional affiliation to run the educational institute filed CWP No. 549 of 2004 against respondents No. 1 & 2 in which the following directions were issued on October 07, 2004 by this Court:

> "Based on the aforesaid discussion, we allow this writ petition by holding that the regulations do exist which provide for affiliation to private institutions running or intending to run JBT course. On that basis, we, therefore, direct respondent No. 2 to process the petitioner's applications which it admits it has already received and after consideration of the petitioner's request on his merits to communicate its decision thereto within a period of one week from today."

It was further alleged that inspite of the directions issued in the writ petition, respondents No. 1 to 3 neither communicated any decision on the application of respondent No. 4 for grant of affiliation to run JBT School, nor sponsored any candidates for admission to the institution and accordingly, respondent No. 4 was forced to file CWP No. 1112 of 2006 for directions to respondents No. 1 to 3 to sponsor the candidates for admission to JBT Training in petitioners' institute from the academic session 2006-2008 as well as for directions to respondents No. 1 & 2 to grant permanent affiliation to the petitioner institute. The said writ petition was allowed by this Court on 9.1.2007 and it was observed that there is a waiting list of candidates available with respondent No. 1. and the respondents were directed to allot 50 candidates to the petitioner's institute on merit. It was also observed that the petitioner has assured that in case the candidates are allotted

to the petitioner's institute, they will cover entire syllabus within the time frame.

It was further alleged that instead of complying with the order passed by this Court for sponsoring the candidates, the respondents No. 1 & 2 filed a S.L.P. before the Supreme Court which dismissed the same on 30.3.2007 without issuing notice to respondent No. 4. It was further alleged that inspite of dismissal of the S.L.P. by the Supreme Court, the respondents did not sponsor the candidates, and a contempt petition was filed by respondent No. 4 and thereafter, respondent No. 3 allotted 50 candidates for two years JBT Course to respondent No. 4 for the session 2006-2008. Out of the 50 seats allotted to respondent No. 4, 50% of the seat was subsidized and remaining 50% was non-subsidized and respondent No. 2 was requested to sponsor a list of 25 candidates separately each for both the category and it was requested that the list of candidates be supplied to respondent No. 4 for completing all the required codal formalities before the date fixed. Out of the candidates sponsored to respondent No. 4 only 30 candidates came for admission and petitioners No. 1,2 and 4 are the three candidates out of 30 candidates who had already been admitted to respondent No. 4 college. The entire process of admission was completed by May 10, 2007. Petitioners No. 1,2 and 4 passed the common entrance test and respondents No. 1 to 3 were also requested to sponsor the remaining candidates for admission to the Course and respondents No. 1 to 3 took up considerable time in sending the list of candidates and another list was sent to respondent No. 4. It was however added that candidates will have to complete the required 80% attendance to make them eligible to sit in the JBT annual Ist year and 2nd year examinations to the JBT Training Course. Only eight candidates

reported for admission by July 10, 2007 and the remaining seats are still vacant with respondent No. 4.

Thus it was prayed that on account of delay in sponsoring the candidates for admission by respondents No. 1 to 3, there has been shortfall in attendance, but the petitioners cannot be made to suffer and the annual examinations for the first year JBT Course are likely to be held in the month of September/October, 2007 and the students of other DIETS in the State have received the examinations forms and last date for submission of the form was 31.7.2007 without late fees and 10.8.2007 with late fees. Respondent No. 4 allegedly had written letters to respondents No. 1 to 3 for sending examination forms for the first year examination which have not been received inspite of the representations made in this behalf and the petitioners prayed that they cannot be denied their right to appear in the examination and filed the present petition for directions to the respondents No. 1 to 3 to supply the examination forms for the first year JBT Training Course and conduct the examination alongwith the students of DIETs.

In their reply, the respondents No. 1 to 3 have pleaded that they had approved 50 candidates and another list of 50 candidates was supplied to respondent No. 4 institute with the directions that the candidates will have to complete the required 80% of total number of attendance in the training institute to make them eligible under the rules to sit in the JBT Examination. It was further submitted that out of the second list few seats had not been filled up due to non joining of candidates and the examination of the candidates can only be conducted after completion of full one year JBT Part-I Course and completion of 80% of required total attendance. It was further pleaded that the classes of JBT Part-I in the Governments DIETs were started

during the month of October, 2006 and therefore, their examination of JBT Part-I will be conducted after completion of one year, whereas the classes of all the four privately managed institutions including the petitioners institute of respondent No. 4 were started from 14.5.2007 onwards and it will not be possible to conduct the JBT Part-I examination of the Institute, since the candidates cannot complete one year JBT Course and will not be able to complete required 80% of the total number of attendance upto October, 2007, within short span of four months and therefore, the petitioners are not entitled to the relief claimed by them.

We have heard the learned counsel for the parties and have carefully gone through the record of the case.

The main relief claimed by the petitioners is that they should be permitted to sit in the annual examination of JBT Training Course which is likely to be held in the September/October, 2007. It is clear that classes were only started in May, 2007 and the petitioners and the other students were not able to complete 80% attendance required during the whole year. A perusal of the Norms and Standards for Teacher Education Institutions shows that the total number of working days required are 220 per year and according to the reply filed by respondent No. 2, the students were required to complete 80% attendance out of the total working days and since the classes started in the month of May, 2007, it cannot be said that it was possible to have 80% attendance during these four months for the full year. The only question for consideration is as to whether the petitioners can be permitted to sit in the examination without completing of 80% attendance as is required for sitting in the examination for JBT Training Course. To our mind this condition cannot be relaxed since the

petitioners are to appear for two years JBT Course and they are required to have 80% attendance out of total working days in a year and various stages are to be covered by them including teaching of students in different subjects and this condition to our mind cannot be relaxed before the petitioners are permitted to sit in the examination. The facts of the case as alleged by the petitioners themselves show that the delay has occurred in sponsoring the students for admission to the JBT Training Course because of the writ petition preferred by respondent No. 4 seeking directions to the respondents for sponsoring students and to some extent due to the filing of S.L.P. by the respondents against the order passed by this Court. The questions pertaining to affiliation do not arise for consideration for which directions had already been issued by this Court in two writ petitions referred to above. The only prayer is made for relaxation of 80% attendance required for this year and for issuance of examination forms by respondents No. 1 to 3 and since that relaxation cannot be made keeping in view the nature of the course, we are of the opinion that relief sought by the petitioners cannot be granted in their favour and as such, there is no merit in this writ petition which deserves to be dismissed and the same is dismissed accordingly with no order as to costs.

CMP No. 1958 of 2007:

In view of the orders passed in the main petition, this application also stands disposed of.

(Deepak Gupta),
Judge

(V.K. Ahuja),
Judge

August 27, 2007
(BSS)